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CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 33

Introduced by Assembly Member Nava

December 1, 2008

~~An act to amend Sections 30, 31, 7500.3, 7502.1, 7502.2, 7522, 7582.2, 7742, 10003, 10004, 10005, 10071, 10082, 10131.3, 10146, 10147, 10149, 10150.6, 10151.5, 10153, 10159.2, 10175.2, 10176.1, 10177, 10225, 10231.2, 10232.1, 10232.2, 10232.4, 10232.25, 10236.2, 10239, 10249.3, 10249.8, 10249.9, 10451.5, 10470.1, 10471, 10471.5, 10472, 10501, 11000.1, 11000.2, 11001, 11003.4, 11010, 11011, 11012, 11018, 11018.1, 11018.2, 11018.7, 11212, 11225, 11232, 11243, 11302, 11314, 11315, 11315.5, 11316, 11317, 11318, 11325, 11326, 11327, 11328, 11340, 11341, 11344, 11350, 11352, 11360, 11361, 11400, 11401, 11406, 11407, 11408, 11409, 11412, 11422, 11502.5, 17511.1, 17537.2, and 20009 of, and to repeal Sections 10050, 10051, 10052, 10053, 10073, 10075, 10076, 10077, 10078, 10079, 10080, 11301, 11310, 11313 of, the Business and Professions Code, to amend Sections 163, 500, 1001, 1101.1, 1300, 2207, 7813.5, 8011.5, 12504, 12532, 13205, 13406, 13408.5, 14025, 15679.2, 15911.21, 17656, 23000, 25004, 25005, 25014.6, 25100, 25102, 25243.5, 25247, 25254, 25600, 25602, 25604, 25606, 25607, 25612.5, 25614, 25702, 28033, 28505, 28715, 29200, 29503, 31004, 31210, 31408, 31503, 31513 of, and to repeal Sections 25601, 25603, and 25620 of, the Corporations Code, to amend Sections 112, 200, 201, 210, 210.5, 215, 262, 1856, 4057, 4805.055, 4970, 4990, 5104, 12003, 12100, 12104, 12307.4, 14003, 14200.1, 14200.2, 14381, 17002, 17006, 17210.2, 17214, 17303, 17311,~~

~~17312, 17320, 17331, 17423.1, 18002, 18002.5, 18339, 18427.9, 18596, 22005, 22159.5, 22160, 22304, 23001, 23070, 23071, 23072, 23073, 23074, 23102, 28000, 30002, 30005, 30217, 31055, 33045.5, 33785, 50003, 50303, 50307.1, 50602, 50702 of, and to add Sections 203 and 210.9 to, the Financial Code, and to amend Section 13975 of the Government Code. An act to amend Sections 11302 and 11310 of, to amend and repeal Section 10015 of, and to amend, repeal, and add Sections 10000, 10050, 11301, and 11313 of, the Business and Professions Code, to amend, repeal, and add Sections 25005 and 31004 of the Corporations Code, to amend Sections 4970 and 23001 of, to amend and repeal Section 252 of, to amend, repeal, and add Sections 112, 210, 4805.055, 5104, 5106, 12003, 14003, 17002, 18002, 18002.5, 22005, 30002, 31055, and 33045.5 of, to add Sections 23002 and 50003.5 to, and to add Division 0.5 (commencing with Section 25) to, the Financial Code, and to amend, repeal, and add Sections 13975 and 13978.6 of the Government Code, relating to financial services.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 33, as amended, Nava. ~~Department of Financial Services.~~
Financial services.

Existing law establishes the Department of Financial Institutions, the Department of Corporations, the Department of Real Estate, and the Office of Real Estate Appraisers in the Business, Transportation and Housing Agency.

Existing law provides for the licensing and regulation of, among others, banks, credit unions, and other financial institutions by the Commissioner of Financial Institutions. Existing law provides for the licensing and regulation of, among others, residential mortgage lenders and finance lenders by the Commissioner of Corporations. Existing law provides for the licensing and regulation of, among others, real estate brokers *and salespersons* by the Real Estate Commissioner. Existing law provides for the licensure and regulation of real estate appraisers by the Director of the Office of Real Estate Appraisers.

This bill would do the following, *effective July 1, 2011*: (1) ~~abolish the Department of Corporations (DOC), the Department of Financial Institutions (DFI), the Department of Real Estate (DRE), and the Office of Real Estate Appraisers (OREA),~~ (2) ~~create a new Department of Financial Services (DFS),~~ (3) ~~designate the chief officer of DFS as the Commissioner of Financial Services,~~ (4) ~~transfer the powers, duties,~~

~~purposes, jurisdiction, responsibilities, and functions of the Commissioner of Corporations, the Commissioner of Financial Institutions, the Real Estate Commissioner, and the Director of the Office of Real Estate Appraisers and those respective departments and that office to the Commissioner of Financial Services and DFS, and (5) require DFS to regulate those persons, entities, and transactions subject to regulation by, or subject to the jurisdiction of, DOC, DFI, DRE, and OREA~~ establish a new Department of Financial Services (DFS) in the Business, Transportation and Housing Agency (BTHA), (2) designate the chief officer of DFS as the Commissioner of Financial Services, (3) transfer the powers, duties, purposes, jurisdiction, responsibilities, and functions of the DOC and DFI to 2 new divisions under the DFS, the Division of Corporations and the Division of Financial Institutions, (4) designate the Commissioner of Corporations and the Commissioner of Financial Institutions as the directors of the Division of Corporations and the Division of Financial Institutions, respectively, (5) establish a new Office of Financial Consumer Advocacy within the DFS, and (6) transfer authority over real estate appraisers to the Department of Real Estate (DRE) under the Real Estate Law.

This bill would, effective July 1, 2012, transfer from the DRE to the Division of Corporations the authority to license and regulate real estate licensees that provide lending, mortgage brokerage services, and business opportunity activities.

In order to implement the above provisions, this bill would require the BTHA, DFI, DOC, DRE, and the Office of Real Estate Appraisers to, on or before January 1, 2011, make specified recommendations regarding the consolidation of these entities or their respective operations. The bill would make findings and declarations in this regard, and would make technical and conforming changes to related provisions and definitions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) The regulation and oversight of financial services in
- 4 California is principally divided between two regulators, the

1 *Department of Financial Institutions and the Department of*
2 *Corporations.*

3 *(b) California is one of only a few states that separate the*
4 *regulation of financial services among different licensing agencies.*
5 *California is also anomalous in that three state departments*
6 *regulate and oversee mortgage brokerage as well as the sale of*
7 *specified business opportunity activities.*

8 *(c) This division of oversight is most apparent in the regulation*
9 *of home mortgage lending that is split among multiple licensing*
10 *schemes, including the California Finance Lenders Law, the*
11 *California Residential Mortgage Lending Act, the Real Estate*
12 *Law, and laws governing the operation of state and federally*
13 *chartered banks or credit unions.*

14 *(d) The Department of Real Estate and the Office of Real Estate*
15 *Appraisers protect consumers in real estate transactions by*
16 *licensing real estate agents and appraisers, respectively.*

17 *(e) This partition of regulation dilutes consumer protection and*
18 *creates confusion and unnecessary administrative difficulties for*
19 *financial services entities.*

20 *(f) The current regulatory system creates licensing arbitrage,*
21 *with entities seeking out licenses from various regulators in order*
22 *to obtain an advantage.*

23 *SEC. 2. Section 10000 of the Business and Professions Code*
24 *is amended to read:*

25 *10000. This part may be cited as the Real Estate Law.*

26 *This section shall become inoperative on July 1, 2011, and, as*
27 *of January 1, 2012, is repealed, unless a later enacted statute, that*
28 *becomes operative on or before January 1, 2012, deletes or extends*
29 *the dates on which it becomes inoperative and is repealed.*

30 *SEC. 3. Section 10000 is added to the Business and Professions*
31 *Code, to read:*

32 *10000. (a) This part and Part 3 (commencing with Section*
33 *11300) may be cited as the Real Estate Law.*

34 *(b) This section shall become operative on July 1, 2011.*

35 *SEC. 4. Section 10050 of the Business and Professions Code*
36 *is amended to read:*

37 *10050. There is in the Business and Transportation Agency a*
38 *Department of Real Estate, the chief officer of which department*
39 *is named the Real Estate Commissioner.*

1 It shall be the principal responsibility of the commissioner to
2 enforce all laws in this part (commencing with Section 10000) and
3 Chapter 1 (commencing with Section 11000) of Part 2 of this
4 division in a manner which achieves the maximum protection for
5 the purchasers of real property and those persons dealing with real
6 estate licensees.

7 *This section shall become inoperative on July 1, 2011, and, as*
8 *of January 1, 2012, is repealed, unless a later enacted statute, that*
9 *becomes operative on or before January 1, 2012, deletes or extends*
10 *the dates on which it becomes inoperative and is repealed.*

11 SEC. 5. Section 10050 is added to the Business and Professions
12 Code, to read:

13 10050. (a) There is in the Business and Transportation Agency
14 a Department of Real Estate, the chief officer of which department
15 is named the Real Estate Commissioner.

16 (b) It shall be the principal responsibility of the commissioner
17 to enforce all laws in this part (commencing with Section 10000),
18 Chapter 1 (commencing with Section 11000) of Part 2, and Part
19 3 (commencing with Section 11300) of this division, subject to
20 subdivision (c) of Section 49 of the Financial Code, in a manner
21 that achieves the maximum protection for the purchasers of real
22 property and those persons dealing with real estate licensees and
23 real estate appraisers.

24 (c) This section shall become operative on July 1, 2011.

25 SEC. 6. Section 11301 of the Business and Professions Code
26 is amended to read:

27 11301. There is hereby created within the Business,
28 Transportation and Housing Agency an Office of Real Estate
29 Appraisers to administer and enforce this part.

30 *This section shall become inoperative on July 1, 2011, and, as*
31 *of January 1, 2012, is repealed, unless a later enacted statute, that*
32 *becomes operative on or before January 1, 2012, deletes or extends*
33 *the dates on which it becomes inoperative and is repealed.*

34 SEC. 7. Section 11301 is added to the Business and Professions
35 Code, to read:

36 11301. (a) There is hereby created within the Department of
37 Real Estate an Office of Real Estate Appraisers to administer and
38 enforce this part.

39 (b) This section shall become operative on July 1, 2011.

1 *SEC. 8. Section 11302 of the Business and Professions Code*
2 *is amended to read:*

3 11302. For the purpose of applying this part, the following
4 terms, unless otherwise expressly indicated, shall mean and have
5 the following definitions:

6 (a) “Agency” means the Business, Transportation and Housing
7 Agency.

8 (b) “Appraisal” means a written statement independently and
9 impartially prepared by a qualified appraiser setting forth an
10 opinion in a federally related transaction as to the market value of
11 an adequately described property as of a specific date, supported
12 by the presentation and analysis of relevant market information.

13 The term “appraisal” does not include an opinion given by a real
14 estate licensee or engineer or land surveyor in the ordinary course
15 of his or her business in connection with a function for which a
16 license is required under Chapter 7 (commencing with Section
17 6700) or Chapter 15 (commencing with Section 8700) of Division
18 3, or Chapter 3 (commencing with Section 10130) or Chapter 7
19 (commencing with Section 10500) and the opinion shall not be
20 referred to as an appraisal. This part does not apply to a probate
21 referee acting pursuant to Sections 400 to 408, inclusive, of the
22 Probate Code unless the appraised transaction is federally related.

23 (c) “Appraisal Foundation” means the Appraisal Foundation
24 that was incorporated as an Illinois not-for-profit corporation on
25 November 30, 1987.

26 (d) “Appraisal Subcommittee” means the Appraisal
27 Subcommittee of the Federal Financial Institutions Examination
28 Council.

29 (e) “Director” means the Director of the Office of Real Estate
30 Appraisers.

31 (f) “Federal financial institutions regulatory agency” means the
32 Federal Reserve Board, Federal Deposit Insurance Corporation,
33 Office of the Comptroller of the Currency, Office of Thrift
34 Supervision, Federal Home Loan Bank System, National Credit
35 Union Administration, the Resolution Trust Corporation, and any
36 other agency determined by the director to have jurisdiction over
37 transactions subject to this part.

38 (g) “Federally related real estate appraisal activity” means the
39 act or process of making or performing an appraisal on real estate

1 or real property in a federally related transaction and preparing an
2 appraisal as a result of that activity.

3 (h) "Federally related transaction" means any real estate-related
4 financial transaction which a federal financial institutions
5 regulatory agency engages in, contracts for or regulates and which
6 requires the services of a state licensed real estate appraiser
7 regulated by this part. This term also includes any transaction
8 identified as such by a federal financial institutions regulatory
9 agency.

10 (i) "License" means any license, certificate, permit, registration,
11 or other means issued by the office authorizing the person to whom
12 it is issued to act pursuant to this part within this state.

13 (j) "Licensure" means the procedures and requirements a person
14 shall comply with in order to qualify for issuance of a license and
15 includes the issuance of the license.

16 (k) "Office" means the Office of Real Estate Appraisers.

17 (l) "Secretary" means the Secretary of the Business,
18 Transportation and Housing Agency.

19 (m) "State licensed real estate appraiser" is a person who is
20 issued and holds a current valid license under this part.

21 (n) "Uniform Standards of Professional Appraisal Practice" are
22 the standards of professional appraisal practice established by the
23 Appraisal Foundation.

24 (o) "Course provider" means a person or entity that provides
25 educational courses related to professional appraisal practice.

26 (p) "*Commissioner*" means the Real Estate Commissioner.

27 SEC. 9. Section 11310 of the Business and Professions Code
28 is amended to read:

29 11310. The Governor shall appoint, subject to confirmation
30 by the Senate, the Director of the Office of Real Estate Appraisers
31 who shall, ~~in consultation with the Governor and secretary,~~
32 administer the licensing and certification program for real estate
33 appraisers. In making the appointment, consideration shall be given
34 to the qualifications of an individual that demonstrate knowledge
35 of the real estate appraisal profession.

36 (a) ~~The (1) Prior to July 1, 2011, the~~ director shall serve at the
37 pleasure of the Governor ~~and shall administer the licensing and~~
38 ~~certification program in consultation with the Governor and~~
39 ~~secretary.~~ The salary for the director shall be fixed and determined

1 by the secretary with approval of the Department of Personnel
2 Administration.

3 *(2) On and after July 1, 2011, the director shall serve at the*
4 *pleasure of the Governor and shall administer the licensing and*
5 *certification program in consultation with the Governor and the*
6 *commissioner. The salary for the director shall be fixed and*
7 *determined by the commissioner with approval of the Department*
8 *of Personnel Administration.*

9 (b) The director shall not be actively engaged in the appraisal
10 business or any other affected industry for the term of appointment,
11 and thereafter the director shall be subject to Section 87406 of the
12 Government Code.

13 (c) The director, in consultation with the secretary *or, on and*
14 *after July 1, 2011, in consultation with the commissioner*, and in
15 accordance with the State Civil Service Act, may appoint and fix
16 the compensation of legal, clerical, technical, investigation, and
17 auditing personnel as may be necessary to carry out this part. All
18 personnel shall perform their respective duties under the
19 supervision and direction of the director.

20 (d) The director may appoint not more than four deputy directors
21 as he or she deems appropriate. The deputy directors shall perform
22 their respective duties under the supervision and direction of the
23 director.

24 (e) Every power granted to or duty imposed upon the director
25 under this part may be exercised or performed in the name of the
26 director by the deputy directors, subject to conditions and
27 limitations as the director may prescribe.

28 *SEC. 10. Section 11313 of the Business and Professions Code*
29 *is amended to read:*

30 11313. The office is under the supervision and control of the
31 secretary. The duty of enforcing and administering this part is
32 vested in the director and he or she is responsible to the secretary
33 therefor. The director shall adopt and enforce rules and regulations
34 as are determined reasonably necessary to carry out the purposes
35 of this part. Those rules and regulations shall be adopted pursuant
36 to Chapter 3.5 (commencing with Section 11340) of Part 1 of
37 Division 3 of Title 2 of the Government Code.

38 *This section shall become inoperative on July 1, 2011, and, as*
39 *of January 1, 2012, is repealed, unless a later enacted statute, that*

1 *becomes operative on or before January 1, 2012, deletes or extends*
2 *the dates on which it becomes inoperative and is repealed.*

3 *SEC. 11. Section 11313 is added to the Business and*
4 *Professions Code, to read:*

5 *11313. (a) The office is under the supervision and control of*
6 *the commissioner. The duty of enforcing and administering this*
7 *part is vested in the director and he or she is responsible to the*
8 *commissioner therefor. The director shall adopt and enforce rules*
9 *and regulations as are determined reasonably necessary to carry*
10 *out the purposes of this part. Those rules and regulations shall be*
11 *adopted pursuant to Chapter 3.5 (commencing with Section 11340)*
12 *of Part 1 of Division 3 of Title 2 of the Government Code.*

13 *(b) This section shall become operative on July 1, 2011.*

14 *SEC. 12. Section 25005 of the Corporations Code is amended*
15 *to read:*

16 *25005. "Commissioner" means the Commissioner of*
17 *Corporations.*

18 *This section shall become inoperative on July 1, 2011, and, as*
19 *of January 1, 2012, is repealed, unless a later enacted statute, that*
20 *becomes operative on or before January 1, 2012, deletes or extends*
21 *the dates on which it becomes inoperative and is repealed.*

22 *SEC. 13. Section 25005 is added to the Corporations Code, to*
23 *read:*

24 *25005. (a) As used in this part, the following terms have the*
25 *following meanings:*

26 *(1) "Department of Corporations" or "department" means the*
27 *Department of Financial Services, Division of Corporations.*

28 *(2) "Commissioner of Corporations" or "commissioner" means*
29 *the Director of the Division of Corporations.*

30 *(b) This section shall become operative on July 1, 2011.*

31 *SEC. 14. Section 31004 of the Corporations Code is amended*
32 *to read:*

33 *31004. "Commissioner" means the Commissioner of*
34 *Corporations.*

35 *This section shall become inoperative on July 1, 2011, and, as*
36 *of January 1, 2012, is repealed, unless a later enacted statute, that*
37 *becomes operative on or before January 1, 2012, deletes or extends*
38 *the dates on which it becomes inoperative and is repealed.*

39 *SEC. 15. Section 31004 is added to the Corporations Code, to*
40 *read:*

1 31004. (a) As used in this part, the following terms have the
2 following meanings:

3 (1) “Department of Corporations” or “department” means the
4 Department of Financial Services, Division of Corporations.

5 (2) “Commissioner of Corporations” or “commissioner” means
6 the Director of the Division of Corporations.

7 (b) This section shall become operative on July 1, 2011.

8 SEC. 16. Division 0.5 (commencing with Section 25) is added
9 to the Financial Code, to read:

10
11 *DIVISION 0.5. CONSOLIDATION OF FINANCIAL SERVICES*
12

13 25. Effective July 1, 2011, there shall be in the state
14 government, in the Business, Transportation and Housing Agency,
15 a Department of Financial Services, which shall consist of the
16 following:

17 (a) The Division of Financial Institutions, comprised of the
18 former Department of Financial Institutions, which shall be
19 primarily responsible for the execution of all laws previously under
20 that department’s jurisdiction subject to oversight by the
21 Commissioner of Financial Services.

22 (b) The Division of Corporations, comprised of the former
23 Department of Corporations, which shall be primarily responsible
24 for the execution of all laws previously under that department’s
25 jurisdiction subject to oversight by the Commissioner of Financial
26 Services.

27 (c) The Office of Financial Consumer Advocacy, which shall
28 advise the Commissioner of Financial Services on how the
29 Department of Financial Services can provide a high degree of
30 service and protection to the public, shall be responsible for public
31 outreach to financial consumers, and shall perform such other
32 duties as determined by the Commissioner of Financial Services.

33 (d) (1) Effective July 1, 2012, the Department of Financial
34 Services, through the Division of Corporations, shall license and
35 regulate mortgage brokers, including those real estate licensees
36 who arrange loans secured by real property in the state, and shall
37 license and regulate those real estate licensees who provide lending
38 and business opportunity activities, as determined pursuant to
39 Section 48, all of whom shall be deemed to be fiduciaries in their

1 *relationship with, and have attendant fiduciary duties toward,*
2 *their principals.*

3 *(2) (A) On or before January 1, 2012, the Commissioner of*
4 *Financial Services, in consultation with the Director of the Division*
5 *of Corporations and the Real Estate Commissioner, shall adopt*
6 *regulations creating a new license or licenses and setting related*
7 *fees such as the Commissioner of Financial Institutions believes*
8 *appropriate for the Department of Financial Institutions, through*
9 *the Division of Corporations, to assume responsibility for the*
10 *provisions of the Real Estate Law that allow real estate licensees*
11 *to provide lending, mortgage brokerage services, and business*
12 *opportunity activities, as determined pursuant to Section 48, and*
13 *including, but not limited to, those activities described in*
14 *subdivisions (d) and (e) of Section 10131 of the Business and*
15 *Professions Code.*

16 *(B) As of the effective date of those regulations, persons holding*
17 *licenses issued by the Department of Real Estate shall no longer*
18 *be authorized to provide lending, mortgage brokerage services,*
19 *and business opportunity activities, including, but not limited to,*
20 *those activities described in subdivisions (d) and (e) of Section*
21 *10131 of the Business and Professions Code, without first obtaining*
22 *a license to do so from the Division of Corporations.*

23 *26. The chief officer of the Department of Financial Services*
24 *shall be the Commissioner of Financial Services. The*
25 *Commissioner of Financial Services shall be the head of the*
26 *department and, except as otherwise provided in this code, shall*
27 *be subject to the provisions of the Government Code relating to*
28 *department heads, but need not reside in Sacramento.*

29 *27. The Commissioner of Financial Services shall be appointed*
30 *by the Governor and shall hold office at the pleasure of the*
31 *Governor. The appointment of the commissioner shall be subject*
32 *to confirmation by the Senate. The commissioner shall receive an*
33 *annual salary fixed by the Secretary of the Business, Transportation*
34 *and Housing Agency and the Department of Personnel*
35 *Administration.*

36 *28. The Commissioner of Financial Services shall be a citizen*
37 *of the United States. The commissioner shall be chosen solely for*
38 *his or her qualifications and fitness to perform the duties of his or*
39 *her office.*

1 29. *Before entering upon the duties of his or her office, the*
2 *Commissioner of Financial Services shall take and subscribe to*
3 *the constitutional oath of office and file the same with the Secretary*
4 *of State.*

5 30. *The Commissioner of Financial Services shall be*
6 *responsible for the performance of all duties, the exercise of all*
7 *powers and jurisdiction, and the assumption and discharge of all*
8 *responsibilities formerly vested by law in the Department of*
9 *Financial Institutions and the Department of Corporations. As*
10 *described in Section 32, the Director of the Division of Financial*
11 *Institutions and the Director of the Division of Corporations shall*
12 *be vested with the primary responsibility for all of the duties,*
13 *powers, and jurisdiction of the former Commissioner of Financial*
14 *Institutions and the Commissioner of Corporations, respectively,*
15 *subject to oversight by the Commissioner of Financial Services.*
16 *The commissioner has, and may exercise, all the powers necessary*
17 *or convenient for the administration and enforcement of these*
18 *laws. The commissioner may issue such rules and regulations*
19 *consistent with law as he or she may deem necessary or advisable*
20 *in executing the powers, duties, and responsibilities of the*
21 *Department of Financial Services.*

22 31. (a) (1) *For purposes of this section, “federal law”*
23 *includes, but is not limited to, the United States Constitution, any*
24 *federal statute, any federal court decision, and any regulation,*
25 *circular, bulletin, interpretation, decision, order, and waiver issued*
26 *by a federal agency.*

27 (2) *The definitions set forth in Section 1700 apply to this section.*

28 (b) *Notwithstanding any other provision of law, except as*
29 *provided in subdivision (c), if the Commissioner of Financial*
30 *Services finds that any provision of federal law applicable to*
31 *financial services providers doing business in this state is*
32 *substantively different from the provisions of this code applicable*
33 *to financial services providers organized under the laws of this*
34 *state or operating under a license issued by the state, the*
35 *Commissioner of Financial Services may, by regulation, if he or*
36 *she deems it advisable, make that provision of federal law*
37 *applicable to financial services providers organized under the*
38 *laws of this state or operating under a license issued by the state.*

39 (c) (1) *Section 11343.4 and Article 5 (commencing with Section*
40 *11346) and Article 6 (commencing with Section 11349) of Chapter*

1 3.5 of Part 1 of Division 3 of Title 2 of the Government Code do
2 not apply to any regulation adopted under subdivision (b).

3 (2) The Commissioner of Financial Services shall file any
4 regulation adopted pursuant to subdivision (b), together with a
5 citation to this section as authority for the adoption and a citation
6 to the provisions of federal law made applicable by the regulation,
7 with the Office of Administrative Law for filing with the Secretary
8 of State and publication in the California Code of Regulations.

9 (3) Any regulation adopted under subdivision (b) shall become
10 effective on the date when it is filed with the Secretary of State
11 unless the Commissioner of Financial Services prescribes a later
12 date in the regulation or in a written instrument filed with the
13 regulation.

14 (4) Any regulation adopted under subdivision (b) shall expire
15 at 12 p.m. on December 31 of the year following the calendar year
16 in which it becomes effective.

17 (5) Any regulation adopted pursuant to subdivision (b) shall be
18 subject to the following restrictions:

19 (A) The Commissioner of Financial Services shall not renew or
20 reinstate the regulation adopted pursuant to subdivision (b).

21 (B) The Commissioner of Financial Services shall not adopt a
22 new regulation pursuant to subdivision (b), to address the same
23 conformity issue that was addressed by the regulation that expired
24 pursuant to paragraph (4).

25 (d) The Commissioner of Financial Services may adopt
26 regulations pursuant to subdivision (b) that are exempt from the
27 expiration and restrictions of subdivision (c) if the regulations are
28 adopted in compliance with all provisions of Chapter 3.5
29 (commencing with Section 11340) of Part 1 of Division 3 of the
30 Government Code, including those listed in paragraph (1) of
31 subdivision (c).

32 32. Effective July 1, 2011, the Division of Financial Institutions
33 shall be headed by the former Commissioner of Financial
34 Institutions who shall have the title Director of the Division of
35 Financial Institutions. Effective July 1, 2011, the Division of
36 Corporations shall be headed by the former Commissioner of
37 Corporations who shall have the title Director of the Division of
38 Corporations. After July 1, 2011, the Commissioner of Financial
39 Services shall have the authority to appoint the directors of these
40 divisions who shall hold office at the commissioner's pleasure.

1 33. *The Office of Financial Consumer Advocacy shall be*
2 *headed by the Director of the Office of Financial Consumer*
3 *Advocacy who shall be appointed by the Commissioner of*
4 *Financial Services and shall serve at the commissioner's pleasure.*
5 *The Director of the Office of Financial Consumer Advocacy shall*
6 *be chosen solely for his or her qualifications and fitness to perform*
7 *the duties of his or her office. The annual salary of the Director*
8 *of the Office of Financial Consumer Advocacy shall be fixed by*
9 *the Commissioner of Financial Services and the Department of*
10 *Personnel Administration.*

11 34. (a) *Effective July 1, 2011, the Commissioner of Financial*
12 *Services and the Department of Financial Services shall succeed*
13 *to all the rights and property of the Commissioner of Corporations*
14 *and the Commissioner of Financial Institutions, and the*
15 *Department of Corporations and the Department of Financial*
16 *Institutions, respectively. The Commissioner of Financial Services*
17 *and the Department of Financial Services shall be subject to all*
18 *the debts and liabilities of the predecessor Commissioner of*
19 *Corporations and the Commissioner of Financial Institutions, and*
20 *the Department of Corporations and the Department of Financial*
21 *Institutions, as if the Commissioner of Financial Services and the*
22 *Department of Financial Services had incurred them.*

23 (b) *Any action or proceeding by or against the Commissioner*
24 *of Corporations, the Commissioner of Financial Institutions, the*
25 *Department of Corporations, or the Department of Financial*
26 *Institutions may be prosecuted to judgment, which shall bind the*
27 *Commissioner of Financial Services or the Department of*
28 *Financial Services, respectively. Alternatively, the Commissioner*
29 *of Financial Services or the Department of Financial Services may*
30 *be proceeded against or substituted in place of the Commissioner*
31 *of Corporations or the Commissioner of Financial Institutions and*
32 *the Department of Corporations or the Department of Financial*
33 *Institutions, respectively.*

34 (c) *The following funds and accounts shall be under the*
35 *jurisdiction of the Commissioner of Financial Services:*

36 (1) *The Financial Institutions Fund created by Section 265.*

37 (2) *The Credit Union Fund created by Section 14354.*

38 (3) *The Guaranty Corporation Fund created by Section 18535.*

39 (4) *The State Corporations Fund created by subdivision (b) of*
40 *Section 13978.6 of the Government Code.*

1 (5) Any other fund or account subject to the jurisdiction of the
2 former Department of Corporations or the former Department of
3 Financial Institutions.

4 (d) All agreements entered into with, and orders and regulations
5 issued by, the Commissioner of Corporations or the Commissioner
6 of Financial Institutions, or the Department of Financial
7 Institutions or the Department of Corporations, shall continue in
8 effect as if the agreements were entered into with, and the orders
9 and regulations were issued by, the Commissioner of Financial
10 Services or the Department of Financial Services.

11 35. (a) The Commissioner of Financial Services may make
12 the agreements that he or she deems necessary or appropriate in
13 exercising his or her powers.

14 (b) (1) The agreements authorized under subdivision (a) may
15 include, but are not limited to, agreements with agencies of this
16 state, of other states of the United States, of the United States, or
17 of foreign nations that regulate financial institutions, relating to
18 oversight of financial services.

19 (2) Any agreement with a governmental agency that regulates
20 financial services is exempt from the advertising and competitive
21 bidding requirements of the Public Contract Code.

22 36. Notwithstanding any other law, the Commissioner of
23 Financial Services may adopt and implement any method of
24 accepting electronic filings of applications, reports, or other
25 matters, which, in the opinion of the commissioner, is secure. Any
26 method of electronic filing chosen by the commissioner shall
27 include a method to verify the identity of the person making the
28 filing. The verification shall be deemed to satisfy all other
29 verifications required by this division, and shall have the same
30 force and effect as the use of manual signatures.

31 37. The Commissioner of Financial Services shall appoint a
32 chief deputy who shall hold office at the pleasure of the
33 Commissioner of Financial Services. The annual salary of the
34 chief deputy shall be fixed by the Commissioner of Financial
35 Services with the approval of the Director of Finance. The chief
36 deputy shall be chosen solely for his or her qualifications and
37 fitness to perform the duties of his or her office and for the ability
38 to succeed to the office of the Commissioner of Financial Services,
39 if needed. If the Commissioner of Financial Services is unable to
40 perform his or her duties for more than 30 consecutive days or if

1 *the office of the Commissioner of Financial Services becomes*
2 *vacant, the chief deputy shall have all the powers and duties of*
3 *the Commissioner of Financial Services until the return or recovery*
4 *of the Commissioner of Financial Services, or, in case of a vacancy,*
5 *until a new Commissioner of Financial Services is appointed by*
6 *the Governor and qualifies to hold office.*

7 38. *The Commissioner of Financial Services may employ*
8 *deputies in addition to the chief deputy and other employees that*
9 *he or she may need to discharge in a proper manner the duties*
10 *imposed upon him or her by law. The commissioner shall prescribe*
11 *their duties and fix their compensation in accordance with*
12 *classifications made by the State Personnel Board. The*
13 *commissioner may also, at those times and on those terms as may*
14 *be approved by the Governor, employ those attorneys as he or she*
15 *may need.*

16 39. *Before entering upon the duties of his or her office, each*
17 *deputy of the Commissioner of Financial Services, the Director of*
18 *the Division of Financial Institutions, the Director of the Division*
19 *of Corporations, and the Director of the Office of Financial*
20 *Consumer Advocacy shall take and subscribe to the constitutional*
21 *oath of office and file the same with the Secretary of State.*

22 40. *The Commissioner of Financial Services may require, at*
23 *any time, of any deputy, the Director of the Division of Financial*
24 *Institutions, the Director of the Division of Corporations, the*
25 *Director of the Office of Financial Consumer Advocacy, or any*
26 *other employee of the department, an official bond in such amount*
27 *as he or she may deem necessary. The premium for bonds required*
28 *by the commissioner shall be an expense of the department.*

29 41. *On or before July 1, 2011, the Commissioner of Financial*
30 *Services shall adopt and promulgate a Conflict of Interest Code*
31 *pursuant to the provisions of Article 3 of Chapter 3 of Title 9 of*
32 *the Government Code (commencing with Section 87300). The*
33 *Conflict of Interest Code shall have the force of law and any*
34 *violation of the Conflict of Interest Code by a designated employee*
35 *shall be deemed a violation of Chapter 3 of Title 9 of the*
36 *Government Code.*

37 42. *In addition to the offices previously maintained by the*
38 *Department of Financial Institutions and the Department of*
39 *Corporations, the Commissioner of Financial Services may*
40 *establish offices in any other location in the state that he or she*

1 *considers appropriate. The commissioner shall provide at the*
2 *expense of the department such office space, furniture, and*
3 *equipment as may be necessary or convenient for the transaction*
4 *of the business of the Department of Financial Services.*

5 43. *The Department of Financial Services may expend moneys*
6 *in accordance with law for the necessary travel expenses of officers*
7 *and employees of the department while traveling in the line of their*
8 *duties either within or without the state.*

9 44. *The Commissioner of Financial Services shall adopt and*
10 *keep an official seal. Papers executed by the Commissioner of*
11 *Financial Services in his or her official capacity pursuant to law*
12 *and bearing the seal, or copies thereof certified by him or her,*
13 *shall be received in evidence in like manner as the original and*
14 *may be recorded in the same manner and with the same effect as*
15 *a deed regularly acknowledged.*

16 45. *Notwithstanding any other law, as of July 1, 2011, all*
17 *references to the Department of Financial Institutions shall be*
18 *deemed to refer to the Division of Financial Institutions within the*
19 *Department of Financial Services and all references to the*
20 *Department of Corporations shall be deemed to refer to the*
21 *Division of Corporations within the Department of Financial*
22 *Services.*

23 46. (a) *The Department of Real Estate shall continue to exist*
24 *in state government, subject to the limitations, effective July 1,*
25 *2012, set forth in subdivision (d) of Section 25 with regard to*
26 *authority that is transferred to the Department of Financial*
27 *Services, Division of Corporations, and shall continue to be located*
28 *within the Business, Transportation and Housing Agency.*

29 (b) *Effective July 1, 2011, the Office of Real Estate Appraisers*
30 *shall be transferred to the Department of Real Estate. The Office*
31 *of Real Estate Appraisers shall be primarily responsible for the*
32 *execution of all laws previously under its jurisdiction subject to*
33 *oversight by the Director of the Office of Real Estate Appraisers.*
34 *The Real Estate Appraisers' Licensing and Certification Law (Part*
35 *3 (commencing with Section 11300) of Division 4 of the Business*
36 *and Professions Code), shall be deemed to be part of the Real*
37 *Estate Law (Part 1 (commencing with Section 10000) of Division*
38 *4 of the Business and Professions Code).*

39 47. *After transfer to the Department of Real Estate on July 1,*
40 *2011, the Office of Real Estate Appraisers shall continue to be*

1 *headed by the Director of the Office of Real Estate Appraisers.*
2 *The Director of the Office of Real Estate Appraisers shall be*
3 *appointed by the Governor and shall serve at his or her pleasure.*

4 *48. On or before January 1, 2011, and for purposes of*
5 *implementation of Section 25, the Secretary of the Business,*
6 *Transportation and Housing Agency, in consultation with the*
7 *Commissioner of Financial Institutions, the Commissioner of*
8 *Corporations, and the Real Estate Commissioner, shall submit a*
9 *report to the Legislature that addresses the following:*

10 *(a) Recommendations regarding all appropriate areas for*
11 *consolidation of the operations, licensing frameworks, regulations,*
12 *and other aspects of, on and after July 1, 2011, the Department*
13 *of Financial Institutions and Department of Corporations, and of*
14 *pertinent lending, mortgage brokerage, and business opportunity*
15 *activities by Department of Real Estate licensees.*

16 *(b) Recommendations regarding any new or different authorities*
17 *needed to address any gaps in, or shortcomings of, the regulation*
18 *of financial services in California.*

19 *(c) Recommendations regarding the possible consolidation of*
20 *the regulation of any other financial services that currently takes*
21 *place outside of the jurisdiction of the Business, Transportation*
22 *and Housing Agency.*

23 *(d) Recommendations regarding the consolidation of the*
24 *regulation of home mortgage lending in California, including, but*
25 *not limited to, recommendations on licensing schemes, including*
26 *the California Finance Lenders Law (Division 9 (commencing*
27 *with Section 22000), the California Residential Mortgage Lending*
28 *Act (Division 20 (commencing with Section 50000), the Real Estate*
29 *Law (Part 1 (commencing with Section 10000) of Division 4 of*
30 *the Business and Professions Code), and laws governing the*
31 *operation of state and federally chartered banks or credit unions.*

32 *(e) Recommendations regarding any firewalls between the future*
33 *Department of Financial Services and its divisions and office of*
34 *Financial Consumer Advocacy, or employees, that may be*
35 *advisable.*

36 *(f) Recommendations regarding an efficient and effective*
37 *implementation of the federal Secure and Fair Enforcement for*
38 *Mortgage Licensing Act of 2008 (Public Law 110-289) within the*
39 *Department of Financial Services.*

1 (g) *Recommendations regarding additional changes that should*
2 *be made in light of any developments at the federal level regarding*
3 *the regulation of financial services.*

4 (h) *Recommendations to better serve and protect financial*
5 *consumers in California, including, but not limited to, public*
6 *outreach and public protections.*

7 (i) *Recommendations regarding the advisability of establishing*
8 *recovery accounts to protect financial services consumers in*
9 *California.*

10 (j) *Recommendations regarding any staffing changes that are*
11 *advisable.*

12 (k) *Recommendations regarding any information technology*
13 *changes that are advisable.*

14 (l) *Recommendations regarding the optimal number, size, and*
15 *locations of offices for the Department of Financial Services and*
16 *its divisions and the Office of Financial Consumer Advocacy.*

17 (m) *Recommendations regarding the structure of fees and other*
18 *revenue sources, as well as reserve accounts.*

19 (n) *The estimated cost impacts of all recommendations made*
20 *and details regarding how those estimated impacts are expected*
21 *to manifest.*

22 (o) *Any other recommendations the Secretary of the Business,*
23 *Transportation and Housing Agency believes would be helpful.*

24 (p) *Recommendations regarding any necessary statutory*
25 *changes required to achieve the recommendations made in the*
26 *report.*

27 49. *On or before January 1, 2011, and for purposes of*
28 *implementing Sections 46 and 47, the Real Estate Commissioner*
29 *and the Director of the Office of Real Estate Appraisers shall*
30 *submit a joint report to the Secretary of Business, Transportation*
31 *and Housing that addresses the following:*

32 (a) *Recommendations regarding the consolidation of the*
33 *operations, licensing frameworks, and other aspects of the*
34 *Department of Real Estate and the Office of Real Estate*
35 *Appraisers.*

36 (b) *Recommendations regarding any new or different authorities*
37 *needed to effect the consolidation.*

38 (c) *Recommendations regarding any firewalls between the*
39 *Department of Real Estate and the Office of Real Estate Appraisers*
40 *or employees that may be advisable to ensure compliance with*

1 *federal law. Those recommendations shall protect the independence*
2 *of the appraiser regulatory function from realty related activities,*
3 *and ensure that decisions relating to appraisal license issuance,*
4 *revocation, and disciplinary actions shall be made by the Director*
5 *of the Office of Real Estate Appraisers and may not be made by*
6 *the Real Estate Commissioner.*

7 *(d) Recommendations regarding any necessary statutory*
8 *changes required to achieve the recommendations made in the*
9 *report.*

10 *(e) Recommendations regarding any necessary regulation*
11 *changes required to achieve the recommendations in the report.*

12 *(f) Recommendations regarding the structure of fees and other*
13 *revenue sources, as well as reserve accounts.*

14 *(g) Recommendations regarding the future of the Recovery*
15 *Account of the Real Estate Fund and the advisability of establishing*
16 *additional or different recovery accounts to protect consumers in*
17 *real estate transactions in California.*

18 *(h) Recommendations regarding staffing changes that are*
19 *advisable.*

20 *(i) Recommendations regarding technology changes that are*
21 *advisable.*

22 *(j) Recommendations regarding state representation at*
23 *administrative hearings.*

24 *(k) The estimated cost impacts of all recommendations made*
25 *and details regarding how those estimated impacts are expected*
26 *to manifest.*

27 *(l) Any other recommendations that the Real Estate*
28 *Commissioner and the Director of the Office of Real Estate*
29 *Appraisers believes would be helpful.*

30 *(m) Recommendations addressing any federal level restrictions*
31 *or impositions on such consolidation of entities.*

32 *SEC. 17. Section 112 of the Financial Code is amended to*
33 *read:*

34 *112. "Commissioner" means the Commissioner of Financial*
35 *Institutions and "department" means the Department of Financial*
36 *Institutions.*

37 *This section shall become inoperative on July 1, 2011, and, as*
38 *of January 1, 2012, is repealed, unless a later enacted statute, that*
39 *becomes operative on or before January 1, 2012, deletes or extends*
40 *the dates on which it becomes inoperative and is repealed.*

1 *SEC. 18. Section 112 is added to the Financial Code, to read:*
2 *112. (a) As used in this division, the following terms have the*
3 *following meanings:*

4 *(1) "Department of Financial Institutions" or "department"*
5 *means the Department of Financial Services, Division of Financial*
6 *Institutions.*

7 *(2) "Commissioner of Financial Institutions" or*
8 *"commissioner" means the Director of the Division of Financial*
9 *Institutions.*

10 *(b) This section shall become operative on July 1, 2011.*

11 *SEC. 19. Section 210 of the Financial Code is amended to*
12 *read:*

13 210. The chief officer of the Department of Financial
14 Institutions is the Commissioner of Financial Institutions. The
15 Commissioner of Financial Institutions is the head of the
16 department and, except as otherwise provided in this code, is
17 subject to the provisions of the Government Code relating to
18 department heads, but need not reside in Sacramento.

19 *This section shall become inoperative on July 1, 2011, and, as*
20 *of January 1, 2012, is repealed, unless a later enacted statute, that*
21 *becomes operative on or before January 1, 2012, deletes or extends*
22 *the dates on which it becomes inoperative and is repealed.*

23 *SEC. 20. Section 210 is added to the Financial Code, to read:*

24 210. The Director of the Division of Financial Institutions is
25 the head of the Division of Financial Institutions, as specified in
26 Division 0.5 (commencing with Section 25).

27 *This section shall become operative on July 1, 2011.*

28 *SEC. 21. Section 252 of the Financial Code is amended to*
29 *read:*

30 252. The commissioner shall adopt and keep an official seal.
31 Papers executed by the commissioner in his or her official capacity
32 pursuant to law and bearing the seal, or copies thereof certified by
33 him or her, shall be received in evidence in like manner as the
34 original and may be recorded in the same manner and with the
35 same effect as a deed regularly acknowledged.

36 *This section shall become inoperative on July 1, 2011, and, as*
37 *of January 1, 2012, is repealed, unless a later enacted statute, that*
38 *becomes operative on or before January 1, 2012, deletes or extends*
39 *the dates on which it becomes inoperative and is repealed.*

1 *SEC. 22. Section 4805.055 of the Financial Code is amended*
2 *to read:*

3 4805.055. “Commissioner” means the Commissioner of
4 Financial Institutions.

5 *This section shall become inoperative on July 1, 2011, and, as*
6 *of January 1, 2012, is repealed, unless a later enacted statute, that*
7 *becomes operative on or before January 1, 2012, deletes or extends*
8 *the dates on which it becomes inoperative and is repealed.*

9 *SEC. 23. Section 4805.055 is added to the Financial Code, to*
10 *read:*

11 4805.055. (a) *As used in this division, the following terms*
12 *have the following meanings:*

13 (1) *“Department of Financial Institutions” or “department”*
14 *means the Department of Financial Services, Division of Financial*
15 *Institutions.*

16 (2) *“Commissioner of Financial Institutions” or*
17 *“commissioner” means the Director of the Division of Financial*
18 *Institutions.*

19 (b) *This section shall become operative on July 1, 2011.*

20 *SEC. 24. Section 4970 of the Financial Code is amended to*
21 *read:*

22 4970. For purposes of this division:

23 (a) “Annual percentage rate” means the annual percentage rate
24 for the loan calculated according to the provisions of the federal
25 Truth in Lending Act and the regulations adopted thereunder by
26 the Federal Reserve Board.

27 (b) “Covered loan” means a consumer loan in which the original
28 principal balance of the loan does not exceed the most current
29 conforming loan limit for a single-family first mortgage loan
30 established by the Federal National Mortgage Association in the
31 case of a mortgage or deed of trust, and where one of the following
32 conditions are met:

33 (1) For a mortgage or deed of trust, the annual percentage rate
34 at consummation of the transaction will exceed by more than eight
35 percentage points the yield on Treasury securities having
36 comparable periods of maturity on the 15th day of the month
37 immediately preceding the month in which the application for the
38 extension of credit is received by the creditor.

1 (2) The total points and fees payable by the consumer at or
2 before closing for a mortgage or deed of trust will exceed 6 percent
3 of the total loan amount.

4 (c) “Points and fees” shall include the following:

5 (1) All items required to be disclosed as finance charges under
6 Sections 226.4(a) and 226.4(b) of Title 12 of the Code of Federal
7 Regulations, including the Official Staff Commentary, as amended
8 from time to time, except interest.

9 (2) All compensation and fees paid to mortgage brokers in
10 connection with the loan transaction.

11 (3) All items listed in Section 226.4(c)(7) of Title 12 of the Code
12 of Federal Regulations, only if the person originating the covered
13 loan receives direct compensation in connection with the charge.

14 (d) “Consumer loan” means a consumer credit transaction that
15 is secured by real property located in this state used, or intended
16 to be used or occupied, as the principal dwelling of the consumer
17 that is improved by a one-to-four residential unit. “Consumer loan”
18 does not include a reverse mortgage, an open line of credit as
19 defined in Part 226 of Title 12 of the Code of Federal Regulations
20 (Regulation Z), or a consumer credit transaction that is secured by
21 rental property or second homes. “Consumer loan” does not include
22 a bridge loan. For purposes of this division, a bridge loan is any
23 temporary loan, having a maturity of one year or less, for the
24 purpose of acquisition or construction of a dwelling intended to
25 become the consumer’s principal dwelling.

26 (e) “Original principal balance” means the total initial amount
27 the consumer is obligated to repay on the loan.

28 (f) “Licensing agency” shall mean the Department of Real Estate
29 for licensed real estate brokers, the Department of Corporations
30 for licensed residential mortgage lenders and licensed finance
31 lenders and brokers, and the Department of Financial Institutions
32 for commercial and industrial banks and savings associations and
33 credit unions organized in this state. *On and after July 1, 2011, or*
34 *as otherwise specified, “licensing agency” shall instead be defined*
35 *as specified in Sections 25, 45, and 46.*

36 (g) “Licensed person” means a real estate broker licensed under
37 the Real Estate Law (Part 1 (commencing with Section 10000) of
38 Division 4 of the Business and Professions Code), a finance lender
39 or broker licensed under the California Finance Lenders Law
40 (Division 9 (commencing with Section 22000)), a residential

1 mortgage lender licensed under the California Residential Mortgage
2 Lending Act (Division 20 (commencing with Section 50000)), a
3 commercial or industrial bank organized under the Banking Law
4 (Division 1 (commencing with Section 99)), a savings association
5 organized under the Savings Association Law (Division 2
6 (commencing with Section 5000)), and a credit union organized
7 under the California Credit Union Law (Division 5 (commencing
8 with Section 14000)). Nothing in this division shall be construed
9 to prevent any enforcement by a governmental entity against any
10 person who originates a loan and who is exempt or excluded from
11 licensure by all of the licensing agencies, based on a violation of
12 any provision of this division. Nothing in this division shall be
13 construed to prevent the Department of Real Estate from enforcing
14 this division against a licensed salesperson employed by a licensed
15 real estate broker as if that salesperson were a licensed person
16 under this division. A licensed person includes any person engaged
17 in the practice of consumer lending, as defined in this division, for
18 which a license is required under any other provision of law, but
19 whose license is invalid, suspended or revoked, or where no license
20 has been obtained.

21 (h) “Originate” means to arrange, negotiate, or make a consumer
22 loan.

23 (i) “Servicer” has the same meaning provided in Section 6 (i)(2)
24 of the Real Estate Settlement Procedures Act of 1974.

25 *SEC. 25. Section 5104 of the Financial Code is amended to*
26 *read:*

27 5104. “Commissioner” means the Commissioner of Financial
28 Institutions.

29 *This section shall become inoperative on July 1, 2011, and, as*
30 *of January 1, 2012, is repealed, unless a later enacted statute, that*
31 *becomes operative on or before January 1, 2012, deletes or extends*
32 *the dates on which it becomes inoperative and is repealed.*

33 *SEC. 26. Section 5104 is added to the Financial Code, to read:*

34 5104. As used in this division, “Commissioner of Financial
35 Institutions” or “commissioner” means the Director of the Division
36 of Financial Institutions.

37 *This section shall become operative on July 1, 2011.*

38 *SEC. 27. Section 5106 of the Financial Code is amended to*
39 *read:*

1 5106. “Department” means the Department of Financial
2 Institutions.

3 *This section shall become inoperative on July 1, 2011, and, as*
4 *of January 1, 2012, is repealed, unless a later enacted statute, that*
5 *becomes operative on or before January 1, 2012, deletes or extends*
6 *the dates on which it becomes inoperative and is repealed.*

7 SEC. 28. Section 5106 is added to the Financial Code, to read:

8 5106. As used in this division, “Department of Financial
9 Institutions” or “department” means the Department of Financial
10 Services, Division of Financial Institutions.

11 *This section shall become operative on July 1, 2011.*

12 SEC. 29. Section 12003 of the Financial Code is amended to
13 read:

14 12003. “Commissioner” means the Commissioner of
15 Corporations of the State of California, or any deputy, investigator,
16 auditor, or any other person employed by him or her.

17 *This section shall become inoperative on July 1, 2011, and, as*
18 *of January 1, 2012, is repealed, unless a later enacted statute, that*
19 *becomes operative on or before January 1, 2012, deletes or extends*
20 *the dates on which it becomes inoperative and is repealed.*

21 SEC. 30. Section 12003 is added to the Financial Code, to
22 read:

23 12003. (a) As used in this division, the following terms have
24 the following meanings:

25 (1) “Department of Corporations” or “department” means the
26 Department of Financial Services, Division of Corporations.

27 (2) “Commissioner of Corporations” or “commissioner” means
28 the Director of the Division of Corporations, or any deputy,
29 investigator, auditor, or any other person employed by him or her.

30 (b) *This section shall become operative on July 1, 2011.*

31 SEC. 31. Section 14003 of the Financial Code is amended to
32 read:

33 14003. “Commissioner” means the Commissioner of Financial
34 Institutions of the State of California.

35 *This section shall become inoperative on July 1, 2011, and, as*
36 *of January 1, 2012, is repealed, unless a later enacted statute, that*
37 *becomes operative on or before January 1, 2012, deletes or extends*
38 *the dates on which it becomes inoperative and is repealed.*

39 SEC. 32. Section 14003 is added to the Financial Code, to
40 read:

1 14003. (a) As used in this division, the following terms have
2 the following meanings:

3 (1) “Department of Financial Institutions” or “department”
4 means the Department of Financial Services, Division of Financial
5 Institutions.

6 (2) “Commissioner of Financial Institutions” or
7 “commissioner” means the Director of the Division of Financial
8 Institutions.

9 (b) This section shall become operative on July 1, 2011.

10 SEC. 33. Section 17002 of the Financial Code is amended to
11 read:

12 17002. “Commissioner” means the Commissioner of
13 Corporations.

14 This section shall become inoperative on July 1, 2011, and, as
15 of January 1, 2012, is repealed, unless a later enacted statute, that
16 becomes operative on or before January 1, 2012, deletes or extends
17 the dates on which it becomes inoperative and is repealed.

18 SEC. 34. Section 17002 is added to the Financial Code, to
19 read:

20 17002. (a) As used in this division, the following terms have
21 the following meanings:

22 (1) “Department of Corporations” or “department” means the
23 Department of Financial Services, Division of Corporations.

24 (2) “Commissioner of Corporations” or “commissioner” means
25 the Director of the Division of Corporations.

26 (b) This section shall become operative on July 1, 2011.

27 SEC. 35. Section 18002 of the Financial Code is amended to
28 read:

29 18002. “Commissioner” means the Commissioner of Financial
30 Institutions of the State of California.

31 This section shall become inoperative on July 1, 2011, and, as
32 of January 1, 2012, is repealed, unless a later enacted statute, that
33 becomes operative on or before January 1, 2012, deletes or extends
34 the dates on which it becomes inoperative and is repealed.

35 SEC. 36. Section 18002 is added to the Financial Code, to
36 read:

37 18002. As used in this division, “Commissioner of Financial
38 Institutions” or “commissioner” means the Director of the Division
39 of Financial Institutions.

40 This section shall become operative on July 1, 2011.

1 *SEC. 37. Section 18002.5 of the Financial Code is amended*
2 *to read:*

3 18002.5. “Department” means the Department of Financial
4 Institutions.

5 *This section shall become inoperative on July 1, 2011, and, as*
6 *of January 1, 2012, is repealed, unless a later enacted statute, that*
7 *becomes operative on or before January 1, 2012, deletes or extends*
8 *the dates on which it becomes inoperative and is repealed.*

9 *SEC. 38. Section 18002.5 is added to the Financial Code, to*
10 *read:*

11 18002.5. As used in this division, “Department of Financial
12 Institutions” or “department” means the Department of Financial
13 Services, Division of Financial Institutions.

14 *This section shall become operative on July 1, 2011.*

15 *SEC. 39. Section 22005 of the Financial Code is amended to*
16 *read:*

17 22005. “Commissioner” means the Commissioner of
18 Corporations.

19 *This section shall become inoperative on July 1, 2011, and, as*
20 *of January 1, 2012, is repealed, unless a later enacted statute, that*
21 *becomes operative on or before January 1, 2012, deletes or extends*
22 *the dates on which it becomes inoperative and is repealed.*

23 *SEC. 40. Section 22005 is added to the Financial Code, to*
24 *read:*

25 22005. (a) As used in this division, the following terms have
26 the following meanings:

27 (1) “Department of Corporations” or “department” means the
28 Department of Financial Services, Division of Corporations.

29 (2) “Commissioner of Corporations” or “commissioner” means
30 the Director of the Division of Corporations.

31 (b) *This section shall become operative on July 1, 2011.*

32 *SEC. 41. Section 23001 of the Financial Code is amended to*
33 *read:*

34 23001. As used in this division, the following terms have the
35 following meanings:

36 (a) “Deferred deposit transaction” means a transaction whereby
37 a person defers depositing a customer’s personal check until a
38 specific date, pursuant to a written agreement for a fee or other
39 charge, as provided in Section 23035.

1 (b) “Commissioner” means the Commissioner of Corporations,
2 *except as specified in Section 23002.*

3 (c) “Department” means the Department of Corporations, *except*
4 *as specified in Section 23002.*

5 (d) “Licensee” means any person who offers, originates, or
6 makes a deferred deposit transaction, who arranges a deferred
7 deposit transaction for a deferred deposit originator, who acts as
8 an agent for a deferred deposit originator, or who assists a deferred
9 deposit originator in the origination of a deferred deposit
10 transaction. However, “licensee” does not include a state or
11 federally chartered bank, thrift, savings association, industrial loan
12 company, or credit union. “Licensee” also does not include a retail
13 seller engaged primarily in the business of selling consumer goods,
14 including consumables, to retail buyers that cashes checks or issues
15 money orders for a minimum fee not exceeding two dollars (\$2)
16 as a service to its customers that is incidental to its main purpose
17 or business. “Licensee” also does not include an employee regularly
18 employed by a licensee at the licensee’s place of business. An
19 employee, when acting under the scope of the employee’s
20 employment, shall be exempt from any other law from which the
21 employee’s employer is exempt.

22 (e) “Person” means an individual, a corporation, a partnership,
23 a limited liability company, a joint venture, an association, a joint
24 stock company, a trust, an unincorporated organization, a
25 government entity, or a political subdivision of a government
26 entity.

27 (f) “Deferred deposit originator” means a person who offers,
28 originates, or makes a deferred deposit transaction.

29 SEC. 42. *Section 23002 is added to the Financial Code, to*
30 *read:*

31 23002. (a) *As used in this division, the following terms have*
32 *the following meanings:*

33 (1) *“Department of Corporations” or “department” means the*
34 *Department of Financial Services, Division of Corporations.*

35 (2) *“Commissioner of Corporations” or “commissioner” means*
36 *the Director of the Division of Corporations.*

37 (b) *This section shall become operative on July 1, 2011.*

38 SEC. 43. *Section 30002 of the Financial Code is amended to*
39 *read:*

1 30002. “Commissioner” means the Commissioner of
2 Corporations.

3 *This section shall become inoperative on July 1, 2011, and, as*
4 *of January 1, 2012, is repealed, unless a later enacted statute, that*
5 *becomes operative on or before January 1, 2012, deletes or extends*
6 *the dates on which it becomes inoperative and is repealed.*

7 SEC. 44. Section 30002 is added to the Financial Code, to
8 read:

9 30002. (a) As used in this division, the following terms have
10 the following meanings:

11 (1) “Department of Corporations” or “department” means the
12 Department of Financial Services, Division of Corporations.

13 (2) “Commissioner of Corporations” or “commissioner” means
14 the Director of the Division of Corporations.

15 (b) *This section shall become operative on July 1, 2011.*

16 SEC. 45. Section 31055 of the Financial Code is amended to
17 read:

18 31055. “Commissioner” means the Commissioner of Financial
19 Institutions, or any person to whom the Commissioner of Financial
20 Institutions delegates the authority to act for him or her in the
21 particular matter.

22 *This section shall become inoperative on July 1, 2011, and, as*
23 *of January 1, 2012, is repealed, unless a later enacted statute, that*
24 *becomes operative on or before January 1, 2012, deletes or extends*
25 *the dates on which it becomes inoperative and is repealed.*

26 SEC. 46. Section 31055 is added to the Financial Code, to
27 read:

28 31055. (a) As used in this division, the following terms have
29 the following meanings:

30 (1) “Department of Financial Institutions” or “department”
31 means the Department of Financial Services, Division of Financial
32 Institutions.

33 (2) “Commissioner of Financial Institutions” or
34 “commissioner” means the Director of the Division of Financial
35 Institutions, or any person to whom the director delegates the
36 authority to act for him or her in a particular matter.

37 (b) *This section shall become operative on July 1, 2011.*

38 SEC. 47. Section 33045.5 of the Financial Code is amended
39 to read:

1 33045.5. “Commissioner” means the Commissioner of
2 Financial Institutions, or any person to whom the Commissioner
3 of Financial Institutions delegates the authority to act for the
4 Commissioner of Financial Institutions in this matter.

5 *This section shall become inoperative on July 1, 2011, and, as*
6 *of January 1, 2012, is repealed, unless a later enacted statute, that*
7 *becomes operative on or before January 1, 2012, deletes or extends*
8 *the dates on which it becomes inoperative and is repealed.*

9 SEC. 48. Section 33045.5 is added to the Financial Code, to
10 read:

11 33045.5. (a) As used in this division, the following terms have
12 the following meanings:

13 (1) “Department of Financial Institutions” or “department”
14 means the Department of Financial Services, Division of Financial
15 Institutions.

16 (2) “Commissioner of Financial Institutions” or
17 “commissioner” means the Director of the Division of Financial
18 Institutions, or any person to whom the director delegates the
19 authority to act for him or her in a particular matter.

20 (b) This section shall become operative on July 1, 2011.

21 SEC. 49. Section 50003.5 is added to the Financial Code, to
22 read:

23 50003.5. (a) Notwithstanding Section 50003, as used in this
24 division, the following terms have the following meanings:

25 (1) “Department of Corporations” or “department” means the
26 Department of Financial Services, Division of Corporations.

27 (2) “Commissioner of Corporations” or “commissioner” means
28 the Director of the Division of Corporations.

29 (b) This section shall become operative on July 1, 2011.

30 SEC. 50. Section 13975 of the Government Code is amended
31 to read:

32 13975. (a) The Business and Transportation Agency in state
33 government is hereby renamed the Business, Transportation and
34 Housing Agency. The agency consists of the State Department of
35 Alcoholic Beverage Control, the Department of the California
36 Highway Patrol, the Department of Corporations, the Department
37 of Housing and Community Development, the Department of
38 Motor Vehicles, the Department of Real Estate, the Department
39 of Transportation, the Department of Financial Institutions, the
40 Department of Managed Health Care, and the Board of Pilot

Commissioners for the Bays of San Francisco, San Pablo, and Suisun; ~~and the~~. The California Housing Finance Agency is also located within the Business, Transportation and Housing Agency, as specified in Division 31 (commencing with Section 50000) of the Health and Safety Code.

(b) This section shall become inoperative on July 1, 2011, and, as of January 1, 2012, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2012, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 51. Section 13975 is added to the Government Code, to read:

13975. (a) The Business and Transportation Agency in state government is hereby renamed the Business, Transportation and Housing Agency. The agency consists of the State Department of Alcoholic Beverage Control, the Department of the California Highway Patrol, the Department of Financial Services, the Department of Housing and Community Development, the Department of Motor Vehicles, the Department of Real Estate, the Department of Transportation, the Department of Managed Health Care, and the Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun. The California Housing Finance Agency is also located within the Business, Transportation and Housing Agency, as specified in Division 31 (commencing with Section 50000) of the Health and Safety Code.

(b) This section shall become operative on July 1, 2011.

SEC. 52. Section 13978.6 of the Government Code is amended to read:

13978.6. (a) The Secretary of the Business, Transportation and Housing Agency shall be generally responsible for the sound fiscal management of each department, office, or other unit within the agency. The secretary shall review and approve the proposed budget of each department, office, or other unit. The secretary shall hold the head of each department, office, or other unit responsible for management control over the administrative, fiscal, and program performance of his or her department, office, or other unit. The secretary shall review the operations and evaluate the performance at appropriate intervals of each department, office, or other unit, and shall seek continually to improve the organization structure, the operating policies, and the management information systems of each department, office, or other unit.

(b) There is in the Business, Transportation, and Housing Agency a Department of Corporations, which has the responsibility for administering various laws. In order to effectively support the Department of Corporations in the administration of these laws, there is hereby established the State Corporations Fund. All expenses and salaries of the Department of Corporations shall be paid out of the State Corporations Fund. Therefore, notwithstanding any provision of any law administered by the Department of Corporations declaring that fees, reimbursements, assessments, or other money or amounts charged and collected by the Department of Corporations under these laws are to be delivered or transmitted to the Treasurer and deposited to the credit of the General Fund, on and after July 1, 1992, all fees, reimbursements, assessments, and other money or amounts charged and collected under these laws and attributable to the 1992–93 fiscal year and subsequent fiscal years shall be delivered or transmitted to the Treasurer and deposited to the credit of the State Corporations Fund.

(c) Funds appropriated from the State Corporations Fund and made available for expenditure for any law or program of the Department of Corporations may come from the following:

(1) Fees and any other amounts charged and collected pursuant to Section 25608 of the Corporations Code, except for fees and other amounts charged and collected pursuant to subdivisions (o) to (r), inclusive, of Section 25608 of the Corporations Code.

(2) Fees collected pursuant to subdivisions (a), (b), (c), and (d) of Section 25608.1 of the Corporations Code.

(d) This section shall become inoperative on July 1, 2011, and, as of January 1, 2012, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2012, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 53. Section 13978.6 is added to the Government Code, to read:

13978.6. (a) The Secretary of the Business, Transportation and Housing Agency shall be generally responsible for the sound fiscal management of each department, office, or other unit within the agency. The secretary shall review and approve the proposed budget of each department, office, or other unit. The secretary shall hold the head of each department, office, or other unit responsible for management control over the administrative, fiscal, and program performance of his or her department, office, or other

1 unit. The secretary shall review the operations and evaluate the
2 performance at appropriate intervals of each department, office,
3 or other unit, and shall seek continually to improve the
4 organization structure, the operating policies, and the management
5 information systems of each department, office, or other unit.

6 (b) There is in the Business, Transportation and Housing Agency
7 a Department of Financial Services, which has the responsibility
8 for administering various laws. In order to effectively support the
9 Department of Financial Services in the administration of these
10 laws, there is hereby continued in existence the State Corporations
11 Fund. All expenses and salaries of the Department of Financial
12 Services shall be paid out of the State Corporations Fund.
13 Therefore, notwithstanding any provision of any law administered
14 by the Department of Financial Services declaring that fees,
15 reimbursements, assessments, or other money or amounts charged
16 and collected by the Department of Financial Services under these
17 laws are to be delivered or transmitted to the Treasurer and
18 deposited to the credit of the General Fund, on and after July 1,
19 1992, all fees, reimbursements, assessments, and other money or
20 amounts charged and collected under these laws and attributable
21 to the 1992–93 fiscal year and subsequent fiscal years shall be
22 delivered or transmitted to the Treasurer and deposited to the
23 credit of the State Corporations Fund.

24 (c) Funds appropriated from the State Corporations Fund and
25 made available for expenditure for any law or program of the
26 Department of Financial Services may come from the following:

27 (1) Fees and any other amounts charged and collected pursuant
28 to Section 25608 of the Corporations Code, except for fees and
29 other amounts charged and collected pursuant to subdivisions (o)
30 to (r), inclusive, of Section 25608 of the Corporations Code.

31 (2) Fees collected pursuant to subdivisions (a), (b), (c), and (d)
32 of Section 25608.1 of the Corporations Code.

33 (d) This section shall become operative on July 1, 2011.

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**All matter omitted in this version of the bill
appears in the bill as amended in the
Assembly, March 24, 2009 (JR11)**

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